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October 18, 1996

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Mr. William F. Caton  
Acting Secretary  
Federal Communications Commission  
Room 222  
1919 M Street, N.W.  
Washington, DC 20554

RE: Ex Parte Presentation: CC Docket No. 96-45

Dear Mr. Caton:

On Thursday, October 17, 1996, William Warner of ISSC, John Lynn of Electronic Data Systems, and Jonathan Jacob Nadler of Squire, Sanders & Dempsey L.L.P., on behalf of the Information Technology Association of America ("ITAA"), met with John S. Morabito, Deputy Chief, Accounting and Audits Division, Common Carrier Bureau, and E. Bryan Clopton, Jr. of the Common Carrier Bureau.

At the meeting, the parties discussed the issues presented in the comments filed by ITAA in the above-captioned proceeding. In accordance with Section 1.1206(a) of the Commission's Rules, we are submitting two copies of this letter and the written material presented at the meeting for inclusion in the public record. Due to the lateness of the hour at which this meeting concluded, this letter is being filed on the next business day, Friday, October 17, 1996.

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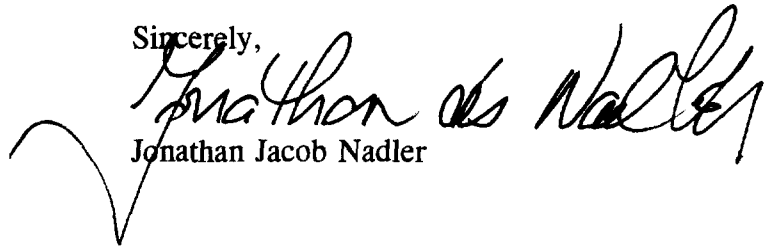
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*Squire, Sanders & Dempsey*

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Please contact the undersigned if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Jonathan Jacob Nadler". The signature is written in a cursive style with a large, sweeping initial "J".

Jonathan Jacob Nadler

Enclosure

cc: John S. Morabito  
E. Bryan Clopton, Jr.

**ENHANCED SERVICES PROVIDERS CAN NOT -- AND SHOULD NOT -- BE REQUIRED TO MAKE DIRECT PAYMENTS TO THE UNIVERSAL SERVICE FUND**

- **ESPs are Not "Providers of Interstate Telecommunications" and, Therefore, Under Section 254(d) of the Communications Act Can Not be Required to Make Direct Payments to the Universal Service Fund.**
  - Only those entities that provide "interstate telecommunications" can be required to make direct payments to the universal service fund.
  - As the FCC has recognized since Computer II, ESPs do not provide telecommunications services; they use basic telecommunications services provided by common carriers to deliver value added offerings to their customers.
  - Enhanced services do not fall within the definition of "telecommunications" contained in the Telecommunications Act.
    - \* Enhanced services typically involve transmission of information from locations (computer servers) that customers neither specify nor know.
    - \* Enhanced services often involve provision of information that is not chosen by the user.
    - \* Enhanced services typically involve changes in the form or content of information sent and received.
- **Imposition of Universal Service Funding Obligations on ESPs Would Violate the Statutory Requirement, in Section 254(b)(4), that the Universal Service Funding Mechanism be "Equitable and Nondiscriminatory."**
  - As major users of telecommunications services, ESPs will make significant contributions to universal service through payments to their carriers.
  - Singling out ESPs and requiring them to make a second payment directly to the universal service fund would be inequitable and discriminatory.
  - Such a "double payment" would be especially inappropriate because ESPs, unlike carriers, may not receive universal service support payments.
  - Basing ESPs' payment obligations on revenues, but allowing them to deduct payments made to carriers for the underlying transmission service, would not remedy the legal defect. The remaining portion of the ESPs' revenues would be attributable to the provision of non-telecommunications services and, therefore, could not be subject to the contribution requirement.

- **Efforts to Impose Universal Service Fund Payment Obligations on Specific Enhanced Services in Which the "Telecommunications Component" Predominates Would Be Unlawful and Infeasible.**
  - The Commission has recognized since Computer II that it is not feasible to identify specific enhanced services in which the "telecommunications component" predominates and limit regulation to those services.
  - Even if such services could be identified, requiring the providers to make direct payments to the universal service fund, while also contributing through their payments for common carrier telecommunications services, would be inequitable and discriminatory.
- **Requiring ESPs to Make Direct Payments to the Universal Service Fund Would Result in an Unprecedented Degree of Regulation.**
  - If ESPs were required to make direct payments to the universal service fund, the FCC would have to:
    - \* develop standards to identify which entities constitute ESPs;
    - \* establish procedures to register ESPs; and
    - \* impose accounting and information disclosure requirements on ESPs.
  - Such action would be inconsistent with Congress' finding in Section 230(b)(2) that, in order to promote continued development of these economically and socially beneficial services, Internet and other interactive computer services should remain "unfettered by Federal or State regulation."